

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

**JERRY LYNN HOPSON v. JACK MORGAN, WARDEN, and the  
STATE OF TENNESSEE**

**Appeal from the Circuit Court for Morgan County  
No. 9175 E. Eugene Eblen, Judge**

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**No. E2006-00625-CCA-R3-HC - Filed November 20, 2007**

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The petitioner, Jerry Lynn Hopson, through counsel, appeals from the trial court's order denying his petition for writ of habeas corpus. The state has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petition fails to establish a cognizable claim for habeas corpus relief. Accordingly, the state's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed  
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Walter B. Johnson, II, Assistant Public Defender, for the appellant.

Robert E. Cooper, Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

In November 1990, a Knox County Grand Jury indicted the petitioner for burglary and theft under \$500 in case number 42902. According to the petitioner, he was on parole at the time and was thus returned to the custody of the department of correction for violating his parole.<sup>1</sup> A capias issued in July 1991, and the petitioner was arrested on August 16, 1991. On August 21, 1991, the United States District Court for the Eastern District of Tennessee issued a writ of habeas corpus ad prosequendum to the Knox County Sheriff directing that the petitioner be brought to appear before the federal court for arraignment on unrelated federal charges. On April 8, 1992, the petitioner pleaded guilty and was convicted in the district court of one count of aiding and abetting in the possession of a firearm shipped in interstate commerce by a convicted felon. He was sentenced to

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<sup>1</sup>The record contains no evidence to support or refute the petitioner's assertion that he had been released on parole in 1990 from the Tennessee Department of Correction when he incurred these charges.

a term of one hundred and eighty months for this offense. The federal court judgment contains a notation that the “defendant has been detained since 8-16-1991.” On March 31, 1993, the petitioner was convicted pursuant to his guilty pleas in the Criminal Court for Knox County of the indicted offenses of burglary and theft. He was sentenced as a career offender to an effective twelve-year sentence. With regard to the criminal court proceedings, the petitioner asserts that he was serving his federal sentence when he was taken to Knox County for sentencing on March 31, then immediately returned to federal prison where he remained until he completed service of his federal sentence on April 22, 2005. At that time, the petitioner was returned to Knox County to begin serving his twelve-year state sentence. The judgments reflect that the state sentences were ordered served consecutively to the federal sentence. The petitioner appealed to this court, challenging his sentencing as a career offender. This court affirmed the judgment. See State v. Jerry Lynn Hopson, No. 03C01-9308–CR-00249 (Tenn. Crim. App. Sept. 27, 1994), app. denied (Tenn. Feb. 6, 1995).

On June 20, 2005, the petitioner filed a petition for writ of habeas corpus. Therein, he contended that “while he was out on the writ of habeas corpus ad prosequendum his incarceration on the [state] charge of burglary continued” and his “time did not stop!” The petitioner further asserted that he has remained a state prisoner since August 21, 1991, the date he contends he was “loaned” to federal authorities. The petitioner concluded that under these facts, the approximately fifteen years he was in custody serving his federal sentence must be time also applied to his Knox County sentences. The petitioner thus takes the position that his twelve-year Knox County sentences have expired. A hearing on the petition was held in October 2005. On March 23, 2006, the trial court found that the habeas corpus petition was not well-taken and denied relief.

In support of the instant motion for summary affirmance, the state argues that the petitioner essentially presents a challenge to the calculation of his sentencing credits based on his theory that he is due credit on his state sentence for the time spent serving his federal sentence. The state contends that pursuant to Tennessee Rule of Criminal Procedure 32(c)(2)(B), the criminal court properly ordered its sentence to run consecutively to the petitioner’s previously imposed federal sentence. That rule provides:

**Prior Non-Tennessee Sentence.** If, as the result of conviction in another state or in federal court, the defendant has any additional sentence or portion thereof to serve, the court shall impose a sentence that is consecutive to any such unserved sentence unless the court determines in the exercise of its discretion that good cause exists to run the sentences concurrently and explicitly so orders.

The grounds upon which habeas corpus relief may be granted in this state are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The writ will issue only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 222 Tenn. 50, 432 S.W.2d 656 (1968); State ex rel. Wade v. Norvell, 1 Tenn. Crim. App. 447, 443 S.W.2d 839 (1969). The purpose of the habeas corpus petition is to contest a void, not merely a voidable, judgment. State ex rel Newsome v. Henderson, 424 S.W.2d 186, 189 (1969).

The state concludes that the petition in this case fails to state a cognizable claim for state habeas corpus relief. This court agrees. The petitioner has stated neither a claim of a void judgment, that is, one that the trial court was without authority to enter, nor one of sentence expiration. It is clear that the petitioner's twelve-year Knox County sentence, properly run consecutively to the federal sentence that expired in April 2005, has itself not yet expired. For these reasons, the trial court properly denied relief.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the petitioner has not established that he is entitled to habeas corpus relief. Accordingly, the state's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

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JUDGE JAMES CURWOOD WITT, JR.